

**UNITED STATES OF AMERICA  
BEFORE FEDERAL COMMUNICATIONS COMMISSION**

*In The Matter Of  
Notice of Proposed Rulemaking  
and  
Memorandum Opinion and Order*

**CG Docket No. 02-278  
CC Docket No. 92-90**

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**COMMENTS OF  
TECHNION COMMUNICATIONS CORPORATION  
ON  
THE NOTICE OF PROPOSED RULEMAKING  
AND  
MEMORANDUM OPINION AND ORDER**

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Submitted by:  
Technion Communications Corporation  
1360 North University Drive, Suite 100  
Plantation, Florida 33322

## INTRODUCTION

Technion Communications Corporation (“Technion”) is a company based in Tamarac, Florida, which operates eight teleservice campuses. Technion was founded in 1994 and currently employs approximately 2,200 people. Technion clients are Fortune 100 companies. The services we provide for our clients include inbound and outbound teleservices, business communication services acquisition, customer care, technical support, business process automation and outsourcing and database management.

Technion hereby offers its comments concerning the Notice of Proposed Rulemaking and Memorandum Opinion and Order submitted before the Federal Communications Commission, in the matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278 CC Docket No. 92-90.

We support the recent efforts of the FCC to investigate and eliminate fraud in the industry and support the Telemarketing Sales Rule as drafted. However, we cannot support the proposed rules by the Commission in this proceeding. The proposed rules place many burdensome restrictions on the thousands of companies like ours that have ethically used the telephone as a legitimate sales and marketing tool. For the reasons set forth below, we are concerned that the FCC’s attempts will do nothing to curtail the abusive and deceptive telemarketing practices of the few, while penalizing the business practices of reputable companies. We believe these changes will have a disastrous impact on the industry as a whole. With regard to the impact on Technion, we will have to revisit our ability to continue to employ the quantity of employees we currently employ.

### **I. Benefits Provided by the Teleservices Industry:**

- A. The teleservice industry is one of the few growing and healthy industries in this ailing economy. The following is worth noting:
  - 1. According to the ATA, the teleservice industry employs approximately 1.2 million people;
  - 2. The ATA also reports that of those persons employed, 10% are disabled, 10% are on welfare to work programs, 35% are minorities and 58% are women (some of these persons fall within two or more of these categories).
  - 3. In a recent market study, the Winterberry Group estimated that the total annual expenditures for teleservices (telemarketing and customer support) was \$148 billion in 2000 (up 19% from 1999), with an estimated 13%, or \$19 billion, generated by outsourced service providers. Moreover, the study estimated that teleservices expenditures would increase to \$240 billion by 2004 (13% average annual growth), with outsourcing growing to \$36 billion, or 15% of the total market (representing 17% compound annual growth);
  - 4. International Data Corporation (IDC) estimated that the market for outsourced customer relationship management services was approximately

\$39 billion in 2001, with projected annual growth of nearly 21%, on average, through 2005, resulting in a global market in excess of \$82 billion.

5. Also according to IDC, the telecommunications, consumer goods and services, financial services, technology, and utility industries accounted for about 86% of all outsourced contact center services in 2000. Other markets experiencing growth include the transportation and government sectors.

- B. Considering the economy is as fragile and unstable as it currently is, we believe the Federal Government should do everything in its power to encourage and support the few industries that are strong enough to provide the backbone for the current economy to get back on its feet. Further, the size and growth pattern described above supports the contention that the teleservices industry provides an important and beneficial service to the public.

## **II. Examples of Benefits Provided by Technion:**

- A. Technion is proud of its accomplishments and positive impact within the communities it has a presence. Two examples are the positive impact Technion has had in the cities of Tamarac and Miramar, Florida. In 1998, Technion rented a 58,000 square foot locale at a strip center in Tamarac. We found the strip center completely depressed and on it's way to becoming run down and crime ridden. Currently, Technion employs approximately 1000 people from four locations in Tamarac. Due to Technion's growth and the presence of a significant number of employees at that location, the strip center now has numerous restaurants, a childcare center and various other businesses. The Tamarac center is now a booming commercial center providing jobs and a safe and clean environment within the City of Tamarac.
- B. Technion also has a call center in the city of Miramar. The location Technion chose was a building that had burned down, also at a strip center. As with the Tamarac center, this location was starting to become extremely run down and to suffer from crime. Technion has taken over the great majority of that building, has built a state-of-the-art facility, and now employs approximately 300 people in the city of Miramar.

## **III. Overall Financial Burden on the Industry:**

- A. The proposed rule is silent regarding who will bear the cost of creating and maintaining this Registry. Unless the FCC funds this Registry itself, the cost of operating this Registry will fall on the teleservice industry, on its clients and ultimately on the consumer. This would likely have a very significant and negative impact on the teleservices industry.
- B. The cost of the increasing regulations will affect the companies that use teleservice companies to market their products. In the current economy in particular, some companies cannot afford to market their products in an efficient

manner with any other medium. Teleservices provides an efficient and cost effective way for many companies to inform their customers and to sell their products and services.

- C. The likely effects would be that certain companies would go out of business. These would include the teleservice companies that cannot bear the additional and rising costs of unreasonable compliance laws, as well as those companies that cannot market their products and services in a cost effective manner without the teleservice option.
- D. The impact of the type of sweeping legislation proposed by the FCC would have a disastrous effect on the number of people employed not only by our company, but also within the industry as a whole. Our company exists because consumers use telemarketing. We follow the appropriate state and federal laws and we honor consumer do-not-call requests. The ATA estimates that if the national DNC registry is established, it is likely that the industry may see as much as sixty (60) percent of the persons it employs being laid off. This translates into approximately 600,000 people losing their jobs.

#### **IV. Specific provisions Technion Opposes**

##### **1. National Do-Not-Call Lists:**

Federal law already provides an easy and efficient means for consumers to remove their names from telemarketers Do-Not-Call lists. The industry has also provided consumers with a one-stop service to remove their names from all calling lists through the DMA's Telephone Preference Service which offers consumers an easy, free, nationwide Do-Not-Call system. This system is exactly what the Commission intends to create by its proposed Rule and establishing a National Do Not Call list would only cost taxpayers, consumers and telemarketers alike, millions of dollars while by creating a redundant service.

With regard to the interplay between Sections 222 and 222, entitled Privacy of Consumer Information, we believe the consumer should have the prerogative to choose which products and services they wish to receive information about. By implementing this National Do Not Call list, the government is infringing on the consumers right to choose. For example, if XYZ Company calls a consumer and the consumer decides that they are not interested in receiving these types of product and /or services in the future, or perhaps feels that this particular company is calling their home too much, the consumer then has the right to request that this company place them on their Do Not Call list. On the other hand this same consumer may receive calls from ABC Company. ABC offers great deals, promotions, savings, which the consumer values and benefits from. This consumer would lose this value and these benefits should the proposed National Do Not Call Registry be implemented.

However, should the Commission nonetheless pass a rule creating a National Do-Not-Call Registry, all Federal and State laws requiring redundant do-not-call lists should be preempted by this new law. Individual States could not easily be integrated into a National Registry due to the differing exemptions and unique bans and/or rules of each State. Additionally, the cost of purchasing multiple lists would be prohibitive and would discourage the development of small businesses, thereby also impacting the country's growing unemployment.

Technion Communications believes that this rule should not apply to consumers who have already established an interest in the product and/or service by having an existing relationship with the client on behalf of whom the telemarketer is placing the call. Businesses should be allowed to provide the best customer service by being able to communicate their new and improved services to their clients without infringement.

## **2. Autodialers**

Predictive dialing devices are used by many state agencies and telemarketing companies and make the operation of such businesses much more cost effective by increasing productivity and assisting with collections of delinquent accounts. In fact, certain State revenue departments have used autodialers to increase the efficiency in which they collect delinquent tax dollars and/or defaulted student loans<sup>1</sup>. Increased efficiency in marketing products and services over the phone through the use of predictive dialers helps to reduce costs and ultimately saves consumers money. Moreover, autodialers allow the user to tailor calling campaigns, track work schedules and generate real time reports and information to allow the most efficient use of the user's resources, and to track how the workflow is impacting its customers. This, in turn, allows users to make necessary adjustments to provide better and more effective customer service, which translates into happier consumers. Any regulation that would render this technology unusable would result in significant, perhaps unacceptable, cost increases to businesses and, ultimately, to the consumer.

Predictive Dialers have been used by the telemarketing industry for over ten (10) years with great results. We do acknowledge that there are concerns when a company abuses its dialer. Technion Communications has maintained a policy of only a 5% abandonment call rate. Abandoned calls are sometimes annoying to consumers. However, prohibiting predictive dialers due to excessive abandonment rates caused by this type of technology used without limitations is like throwing away the baby with the bath water. Instead of outlawing this type of technology, which provides a significant and beneficial service, we should place metrics, which would allow the industry to take advantage of this technology, while at the same time minimizing the annoyance created by abuse. If the telemarketing industry abided by a maximum abandonment rate of 5%, the consumers would not be flooded by hang-ups or "dead air" that is so annoying to consumers. This

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<sup>1</sup> For example, according to the ATA, autodialing technology has contributed to a 49% increase in the collection of defaulted student loans by the Oregon State Scholarship Commission.

does not mean that a consumer will not experience this “dead air” every once in a while. However, we believe the consumer dissatisfaction with the industry comes from the sheer volume of calls of this sort. If the industry abides by this standard, we believe this issue will no longer be a nuisance. Further, every year, the technology becomes more and more accurate. We believe this 5% baseline can be reduced as the technology is improved. However, if the baseline is reduced below the 5% at this time, we do not believe any company would be able to abide by it. Therefore, the actual effect of a less than 5% abandonment rate would be to prohibit predictive dialers.

Restriction placed on predictive dialers will automatically work in conjunction with the answering machine detection as they both normally work in concurrence with one another. The predictive dialer dials a predetermined set of numbers, and if the call is answered by a one-word greeting followed by a pause, the predictive dialer will attempt to disposition the call to a telemarketer. If, on the other hand, the dialer registers a verbal phrase, it will assume that it has reached an answering machine and will disconnect and register the call accordingly. This has historically been set up that way so that the consumer’s available recording time is not congested with calls from persons other than their friends and family. We think that it would be a waste of the consumer’s time and property. The benefit of this answering machine detection, is that businesses wish to speak with people and offer them the services they provide. Leaving messages on the consumers’ answering machines is both expensive and completely ineffective. The effect of dropping these calls without leaving a message is a benefit to consumers. Telemarketing companies should not use up the limited space in the consumers answering machines. Instead of prohibiting autodialers, again, there should be clear metrics allowing telemarketing companies to attempt to reach consumers, while curbing abuse.

### **3) Blocking Caller ID**

The laws passed by several states not allowing companies to block the caller ID is a step in the right direction. These laws ensure that telemarketing companies can be identified and can answer any issues regarding their company’s business practices. However, the net effect at this time is that the few companies that are abiding by these laws are being blamed for the calls made by those that are still blocking the caller ID. For example, in our experience, the majority of the time a consumer will receive five (5) missed calls with only one number being identified and the rest being identified on the caller ID as “unknown”. The consumer typically will bundle all the calls together, call the one number that was accessible and complain to that company about having been called five (5) times. The consumer is blaming the one company properly identifying its telephone number for other calls not made by the law-abiding company. This law-abiding company is spending considerable resources not only to comply with all the laws and regulations, but also to defend itself from improper complaints. These laws should be uniformly enforced to the law-abiding companies are not bearing the brunt of the companies that fail to follow the law. Additionally, the Federal Agencies and States should not punish the companies that are following all the laws because of the action of those that fail to abide by them.

In summary, laws should not be passed to make the technologies that help to do business efficiently and effectively. Further, even if the laws do not prohibit these technologies, the regulations should be drafted carefully so that they don't prohibit them in effect by setting impossible standards. There is a middle ground that would maximize the benefits of these technologies while at the same time addressing consumer concerns.

#### **4) Time of Day Restrictions**

The FTC indicates that the current calling time restrictions provide reasonable protections for consumers' privacy while not burdening the telemarketing industry. They also state that altering the calling hours under the TSR would create a conflict in the federal (FCC) regulations governing telemarketers. Technion Communications also believes that the current hours outlined in the Telemarketing Sales Rule and Telephone Consumer Protection Act represent a reasonable balance between the concerns of the consumer and the interests of all businesses. These hours are crucial to the success of any business or organization attempting to solicit lawful products, services and/or donations. Any further limits would negatively impact the ability of marketers to conduct legitimate business transactions and harm existing customer relationships.

#### **5) Enforcement**

We believe that each State should be allowed to legislate its own constituencies. Under the current law a consumer may file suit in state court if a caller violates the TCPA's prohibition on the use of automatic dialing system and artificial or prerecorded voice messages. We believe that the current law clogs our already over-litigated court system with frivolous lawsuits, which only create nuisance payments by mostly law-abiding companies who may mistakenly due to technology or clerical error violate the prohibitions. Our suggestion would be that only companies that have unethically disregarded, or acted in a negligent willful manner be penalized for its conduct.

#### **Conclusion**

Technion urges the Commission to look at the overall negative impact that these proposals will have on jobs, our community and the economy as a whole. Thank you for your consideration and we would be happy to assist the Commission in the future.

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Technion Communications Corp.  
(954) 721-1994 x4815  
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